

The Hon. Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, ) No. CR10-336-RAJ  
Plaintiff, )  
v. ) GOVERNMENT'S SENTENCING  
COLTON HARRIS-MOORE, ) MEMORANDUM  
Defendant. )

## I. INTRODUCTION

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Darwin P. Roberts and Michael Dion, Assistant United States Attorneys for said District, hereby submits this Sentencing Memorandum in the above-captioned matter. Sentencing is scheduled for Friday, January 27, 2012, at 9:00 a.m. For the reasons described below, the United States agrees with all of U.S. Probation's sentencing recommendations, including a 78 month term of imprisonment. That term falls in the middle of the Guidelines range calculated by U.S. Probation, and near the low end of the Guidelines range calculated by the United States.

Facing very strong evidence against him, Colton Harris-Moore has pled guilty to seven federal crimes he committed in 2009 and 2010. They include a bank burglary; the

1      interstate transportation of two stolen aircraft and one stolen vessel; piloting another  
 2      (stolen) aircraft without a license; and two firearms offenses involving stolen handguns.  
 3      In his Plea Agreement (Dkt #50), Mr. Harris-Moore also acknowledged, as relevant  
 4      conduct, at least twenty-seven other crimes that he committed outside the State of  
 5      Washington. Most prominently, in May, June, and July, 2010, he committed a string of  
 6      offenses as he traveled through Oregon, Idaho, Wyoming, South Dakota, Nebraska, and  
 7      Iowa, including nine auto thefts and eight burglaries. Among these were a residential  
 8      burglary in South Dakota. During that burglary, Mr. Harris-Moore was discovered by the  
 9      homeowner, and threatened to shoot the homeowner in order to make his escape.

10     On December 16, 2011, Mr. Harris-Moore appeared in the Superior Court of  
 11    Washington for Island County, where he pled guilty to 33 additional felony charges  
 12    committed between 2008 and 2010 in Island, San Juan, and Snohomish Counties. This  
 13    means that a combined total of at least 67 crimes by Mr. Harris-Moore are being  
 14    recognized in the state and federal proceedings. Mr. Harris-Moore committed all of these  
 15    crimes in a single 27-month span, during which he was a fugitive from a Washington  
 16    juvenile sentence. The combined total of restitution owed by Mr. Harris-Moore, for the  
 17    damages he caused, will be not less than \$1,271,236.60.

18     As he appears for sentencing by this Court, Mr. Harris-Moore has written a letter  
 19    acknowledging his crimes and apologizing to his victims. He has agreed to forfeit the  
 20    intellectual property rights to the story of his crimes, for the purpose of funding restitution  
 21    to victims. He has presented mitigation materials that discuss his unquestionably difficult  
 22    childhood. He has obtained a report from a medical expert concluding that he has been  
 23    affected by fetal alcohol syndrome, and that he suffers from post-traumatic stress disorder  
 24    caused by his near-fatal first airplane theft in 2008.

25     The United States submits that despite Mr. Harris-Moore's guilty pleas, his letter  
 26    accepting responsibility, and his arguments for mitigation, Mr. Harris-Moore should  
 27    receive the full 78-month sentence recommended by the United States and U.S.  
 28    Probation. There are several reasons for this. They include the prolonged and deliberate

1 nature of his crimes, which were committed solely for his own amusement and profit; his  
 2 repeated willingness to use violence and the threat of violence, with stolen guns, to avoid  
 3 capture; serious questions, as revealed by his private statements, concerning the sincerity  
 4 of his acceptance of responsibility; and the overall reasonableness of the recommended  
 5 sentence, given the very high number of crimes acknowledged through this case.

6 First, the evidence proves that Mr. Harris-Moore's criminal odyssey was carefully  
 7 planned and entirely intentional. Mr. Harris-Moore attempts to whitewash his actions as  
 8 all part of his childhood dream of flying, but his aircraft thefts were merely the showiest  
 9 parts of his crime spree. Mr. Harris-Moore took deliberate, focused action to enrich and  
 10 entertain himself at others' expense, while evading capture for as long as possible. There  
 11 is evidence suggesting Harris-Moore had long planned to steal as much money as he  
 12 could while permanently escaping to the Caribbean in a stolen aircraft. To this end, he  
 13 tried to build up a cash hoard by repeatedly burglarizing businesses and attacking their  
 14 safes and ATMs. Meanwhile, he used stolen computers to hone his flying skills, research  
 15 his future crimes, check up on the police trying to catch him, check his following on the  
 16 Internet, and (likely) communicate with supporters.

17 Second, Mr. Harris-Moore used force or the threat of force to evade capture on  
 18 multiple occasions. These included his threat to shoot the homeowner who discovered  
 19 him in South Dakota; firing a shot to stop sheriff's deputies chasing him near Granite  
 20 Falls; and pepper spraying a deputy to avoid capture on Orcas Island. Mr. Harris-Moore  
 21 also stole at least three semiautomatic handguns and a police assault rifle during his time  
 22 on the run. This helped him evade law enforcement by making officers warier of him,  
 23 and caused additional fear for his victims and their neighbors. All of this created many  
 24 dangerous situations in which Mr. Harris-Moore, or someone else, could have been hurt  
 25 or killed.

26 Third, there are good reasons to question whether Mr. Harris-Moore's public  
 27 expressions of remorse and acceptance of responsibility are entirely genuine. Many of his  
 28 private statements take a tone that is quite different from his Letter to the Court. For

1 example, after his Superior Court sentencing on December 16, he declared that the state's  
 2 case against him was "high propaganda" and "weak argument"; called his sentencing  
 3 "political," meant to "appease" the "citizens and sheriffs"; and called the prosecution and  
 4 police "swine," "fools" and "asses." He called the Superior Court's pronouncement of a  
 5 low-end sentence "a much appreciated recognition and validation." His Letter to the  
 6 Court asserts that he does not want to "glamorize" anything he has done, but in private, he  
 7 described his flights as "amazing" and compared himself to "the Wright brothers."

8 Fourth, and finally, the recommended 78-month sentence is entirely fair in light of  
 9 the facts and circumstances of the case. The Plea Agreement takes Mr. Harris-Moore's  
 10 mitigating circumstances into account by allowing him to consolidate dozens of his  
 11 crimes into this sentencing. A 78-month sentence is within the middle of the range  
 12 calculated by U.S. Probation just for the offenses charged in the Superseding Information,  
 13 not including the other offenses listed here as relevant conduct. It is near the low end of  
 14 the range calculated by the United States. Mr. Harris-Moore already obtained similar  
 15 benefits from consolidating dozens of additional crimes in Superior Court. He should not  
 16 receive any further "breaks."

17 Mr. Harris-Moore's troubled childhood does not excuse the fact that he committed  
 18 scores of felonies out of pure self-interest and greed. During his time "on the run," he  
 19 fully understood that his crimes were wrong, but he still chose to inflict them on others.  
 20 The United States endorses U.S. Probation's recommendation of a 78 month sentence of  
 21 imprisonment, in the middle of U.S. Probation's calculated Guidelines range. The United  
 22 States also agrees with U.S. Probation that the federal sentence should be imposed  
 23 consecutive to the undischarged state sentence that Mr. Harris-Moore previously escaped  
 24 from, so that his flight to the Bahamas will not be rewarded with a discount on his total  
 25 term of imprisonment. The United States further endorses the maximum three year term  
 26 of supervised release, with all the special conditions recommended by U.S. Probation.  
 27 Finally, the United States requests that the Court enter the Preliminary Order of  
 28 Forfeiture, and impose the government's proposed Order of Restitution.

1      **II. FACTUAL BACKGROUND**

2      The essential facts of this case are accurately outlined in the Presentence Report  
 3      (“PSR”). In order to fully illustrate the scope of Mr. Harris-Moore’s relevant criminal  
 4      conduct, the United States submits the following statement of facts.<sup>1</sup>

5      **A. Mr. Harris-Moore’s Account of his Crimes**

6      Mr. Harris-Moore has submitted a Letter to the Court (undated, but filed in state  
 7      court approximately December 13, 2011). His narrative explaining how and why he  
 8      committed his crimes focuses almost exclusively on what he calls the “personal journey  
 9      that would pit me face to face with my own mortality,” namely, his preparation to steal  
 10     his first airplane, on November 11, 2008. Letter to the Court, at 2. After escaping from  
 11     juvenile custody on April 29, 2008, Mr. Harris-Moore states that he spent the summer  
 12     living at a “mountain campsite” on Orcas Island. There, he says, he bicycled daily to  
 13     Eastsound to observe airport operations, while training himself how to fly light aircraft,  
 14     using videos and stolen manuals. *Id.* Mr. Harris-Moore omits that during this period, he  
 15     burglarized a number of Orcas Island residences and businesses. These included his theft  
 16     of \$10,000 from a restaurant safe in Eastsound around August 27, 2008, and his  
 17     September 25 pepper spraying of a sheriff’s deputy who was trying to apprehend him  
 18     while he burglarized a house near his campsite.

19      Mr. Harris-Moore describes at length how, on November 11, he “discover[ed] both  
 20     passion and . . . a dream” by stealing his first aircraft, flying it through bad weather and  
 21     going into an uncontrolled spin, before recovering through “second-nature skill” and  
 22     “ma[king] it out of a situation all odds said I shouldn’t have.” Letter to the Court, at 2-3.  
 23     His narrative ends with him still airborne, leaving out that shortly afterwards, he crashed  
 24     and ruined the \$182,000 airplane (*see* photographs, below). He concludes that:

25  
 26      <sup>1</sup> Unless specifically noted otherwise, all the facts described below are based on the Plea  
 27      Agreement, the Presentence Report, Mr. Harris-Moore’s Dec. 16 pleas in Island, San Juan, and  
 28      Snohomish Counties, and the evidence provided to Mr. Harris-Moore in discovery. In the event  
       that Mr. Harris-Moore contests any of the facts described in this Memorandum, the United States  
       will supplement the record with appropriate evidence.

1 The morning of November 11, 2008 changed my life forever . . . opened my  
 2 mind and gave me insight into not only myself, but the world; valuable life  
 3 lessons that I believe I couldn't have learned any other way.

4 Letter to the Court, at 3.



10 **Yakama Reservation, November 12, 2008**

11 Mr. Harris-Moore's letter offers no specific explanation for any of the dozens of  
 12 felonies he committed after his 2008 flight. Essentially, he claims that his actions were  
 13 "immature" and he did not understand "their life-long ramifications." He states that he  
 14 did not believe at the time that he was truly frightening his victims, and declares:

15 Your Honor, I don't know where I could have broken the cycle. Each step  
 16 of the way, I felt that I was more and more entrenched with a path, and the  
 17 situation had taken a life of its own. Tainted mistakes of my past, which  
 18 snowballed into new crimes to sustain my present, and while I tried to  
 distract myself with the dreams of the future, I am before you know paying  
 for all these mistakes.

19 Letter to the Court, at 1, 3. In evaluating whether Mr. Harris-Moore genuinely felt  
 20 himself haplessly "entrenched with a path" in a "situation" that "had taken [on] a life of  
 21 its own," it is useful to review the evidence of what he actually did during this time.

22 **B. Mr. Harris-Moore's Crimes in 2009**

23 Mr. Harris-Moore disappeared for some time after the November 2008 plane theft,  
 24 and seems to have spent time living in Reno. Presentence Report, ¶ 14; Harris-Moore  
 25 email to P.R., August 17, 2011. He returned to Washington by June, 2009, when he stole  
 26 an AR-15 type rifle from a deputy's patrol car on Camano Island. In August 2009, he  
 27 traveled to Orcas Island in a boat he stole from La Conner. Presentence Report, ¶ 14.  
 28

1 Beginning in September, Mr. Harris-Moore committed a number of nighttime  
 2 burglaries at various businesses in the Eastsound area. On September 4, 2009, he broke  
 3 into the Ace Hardware and stole a selection of tools, including a sledgehammer, crowbar  
 4 and drill bits. He also broke open the store's safe and stole approximately \$2,000.00 in  
 5 cash that had been stored in black Key Bank bags. Presentence Report, ¶¶ 14-15.

6 The next evening was the night of Friday the 4th to Saturday the 5th, the beginning  
 7 of Labor Day weekend. Mr. Harris-Moore took the tools he had stolen from Ace  
 8 Hardware and broke into Islanders Bank, knocking out a window that (at the time) lacked  
 9 an alarm (Count 1). Using the Ace tools, and a drill stolen from the Homegrown Market,  
 10 he attacked the ATM safe and attempted to break it open. He knocked off the  
 11 combination dial and drilled several holes in the safe. He could not open the safe, but  
 12 caused over \$1000.00 in damage to the bank and the safe. Presentence Report, ¶ 15.

13 **Eastsound, Orcas Island, September 5, 2009:**  
 14 **Burglary at Islanders Bank (Count 1)**



21 Having failed to steal any money from the bank, Mr. Harris-Moore moved on to other  
 22 targets. On September 8, he broke into the nearby Island Market grocery store, and tried  
 23 but failed to break open (or cart away) its ATM. On September 9, he stole a \$50,000 boat  
 24 and traveled to San Juan Island, leaving the boat adrift off of Friday Harbor, which  
 25 caused it \$17,000 in damage. On the morning of September 11, 2011, he stole his second  
 26 aircraft, a Cirrus SR22, from the Friday Harbor airport. This SR22, valued at \$700,000,  
 27 was equipped with a Garmin G-1000 electronic cockpit system, which seems to have been  
 28

1 the primary system on which Mr. Harris-Moore trained himself to fly. He flew the Cirrus  
 2 back to Eastsound, approximately 12 miles, and caused more than \$8,000 in damage to it  
 3 by running it off the runway and across the grass at high speed. Presentence Report, ¶ 16.

4 **Eastsound, Sept. 2009: Island Market burglary with Ace Hardware crowbar**  
 5 **(Sept. 8); Cirrus stolen from Friday Harbor, landing gear damaged (Sept. 11)**



19 On September 12, Mr. Harris-Moore eluded a deputy in a foot chase in Eastsound,  
 20 yelling "You can't catch me" in the dark. Around September 13, he stole a boat from  
 21 Orcas Island, piloted it north to Point Roberts, left the boat adrift, and crossed on foot into  
 22 Canada. In Canada, he stole a BMW and drove eastward. Presentence Report, ¶¶ 16-17.

23 **Boat stolen from Orcas Island, Sept. 12, recovered drifting off Point Roberts;**  
 24 **BMW stolen from Delta, BC, recovered at Creston, BC**



29 A witness who knew Mr. Harris-Moore reported to the FBI that around this time,  
 30 he received two telephone calls from Harris-Moore. This witness's statements, made in  
 31 late 2009, were consistent with what is now known about Harris-Moore's actions. The

1 witness, "W," reported that during the first call, in September of 2009, Harris-Moore told  
 2 "W" that he wanted to arrange a meeting, with "W" and another person, in Canada; that  
 3 he had recently tried to steal an ATM, but failed; and that he had traveled to Canada by  
 4 using a stolen boat to get from "the islands" to Point Roberts.

5 In the second call, which "W" believed was a short time after the first, Harris-  
 6 Moore told "W" that he had stolen an airplane; that he had stolen airplanes before; and  
 7 that he had learned to fly using a simulator game on a stolen laptop computer. Harris-  
 8 Moore also stated that his mother wanted him to turn himself in to police, but that he was  
 9 "blowing off" this advice, he did not want to go back to jail, was trying to obtain a false  
 10 identity, and was interested in obtaining firearms. "W" also reported to the FBI (in 2009)  
 11 that Harris-Moore had told him he eventually intended to steal a jet and fly to the Cayman  
 12 Islands, where he wanted to rob an unspecified "rich guy."

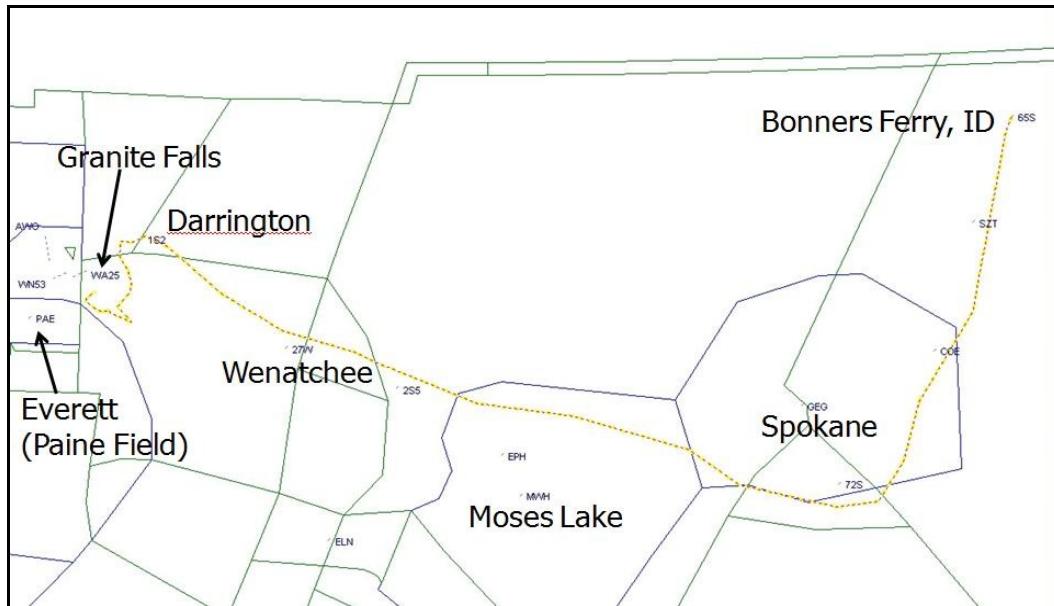
13 Around Friday, September 25, 2009, Mr. Harris-Moore arrived in Creston, British  
 14 Columbia, just north of Idaho. He abandoned the BMW he had stolen from Delta, BC,  
 15 and burglarized the Creston Airport. He moved a Cessna 182 but failed to start it. From  
 16 a file cabinet in a hangar, he stole a Dell laptop computer, \$200 in cash and a .32 caliber  
 17 semiautomatic pistol. Presentence Report, ¶ 18. Around September 27, Harris-Moore  
 18 stole a Toyota to travel the short distance to the United States border, which he crossed on  
 19 foot, carrying the stolen Canadian pistol with him (Count 3). *Id.*

20 **Creston Airport, Creston, BC (Stolen pistol, Count 3);  
 21 Burglarized hangar, Boundary County Airport, Bonners Ferry, ID (Count 2)**



1 Just over the border, Mr. Harris-Moore stole another car, drove it south and  
 2 abandoned it near the Boundary County Airport outside Bonners Ferry, Idaho. He  
 3 burglarized hangars at the airport on September 28 and September 29. On Tuesday the  
 4 29th, he stole a G-1000 equipped Cessna T182T that belonged to P.G. (Count 2).  
 5 Presentence Report, ¶ 19.

6 **Flight path of Cessna N2183P, September 29, 2009 (Count 2)**



17  
 18 Taking off around 6:00 in the morning, Mr. Harris-Moore flew the Cessna south  
 19 around Spokane and then west. The flight lasted for about four hours, until he ran out of  
 20 fuel and crashed the plane in Snohomish County, in a clearcut field east of Granite Falls.  
 21 Presentence Report, ¶¶ 19-20; *see* photograph, below.

22 Mr. Harris-Moore fled only a few miles from the site of the plane crash. On the  
 23 outskirts of Granite Falls, he broke into the house of the G. family, who were not home at  
 24 the time. Rifling the house, he stole a comforter, food and clothing, and passports. He  
 25 also stole a .22 caliber semiautomatic pistol (Count 4), and carried these items to a  
 26 makeshift camp in the woods behind the house. Presentence Report, ¶ 20.  
 27  
 28

**Granite Falls, October 2009:  
Cessna N2183P, crashed (Count 2); burglarized house (Count 4)**



On Sunday, October 4, 2009, officers investigating the burglary spotted a light in the woods behind the G. family's house, and went in with a tracking dog to investigate. Officers could hear Mr. Harris-Moore running away when a gunshot was fired from about 30 feet in front of them. The officers fell back to wait for support and Mr. Harris-Moore escaped. The next morning, he stole a GMC Yukon from a house on the west side of Granite Falls and drove to Stanwood, by the highway entrance to Camano Island.

## **Granite Falls, October 2009: Cash hoard in Key Bank bags from Ace Hardware, and Canadian stolen pistol (Count 3), recovered at campsite**



In the campsite, police found the .32 pistol that Mr. Harris-Moore stole at the Creston Airport (Count 3). They also found the Key Bank bags that he stole from the Eastsound Ace Hardware in September. Although about \$2,000 had been stolen from the Ace

1 Hardware, the bags now contained about \$7,000 U.S. and \$230 Canadian currency.

2 Presentence Report, ¶¶ 20-22.

3 Around November, 2009, a Facebook page that had been set up to support Mr.  
 4 Harris-Moore began to attract an increasingly large number of “fans.” Mr. Harris-Moore  
 5 has stated that while he was on the run, “I would log onto face book every month or so,  
 6 just to see what was being said,” though he also said it was “always the same mix” and  
 7 “got old.” Harris-Moore email to E.A., Dec. 5, 2011.

8 **C. Mr. Harris-Moore’s Crimes in 2010: Orcas Island**

9 Just after midnight on February 10, 2010, Mr. Harris-Moore stole a Cirrus SR22  
 10 from the airport at Anacortes (Count 5). He flew northwest, but avoided the restricted  
 11 airspace around the Vancouver Winter Olympics and landed at Eastsound, about 16 miles  
 12 away. As he had in September, Harris-Moore ran the aircraft off the runway at high  
 13 speed, this time causing almost \$29,000 in damage. Later the same night, he broke into  
 14 the Homegrown Market in Eastsound, stealing food and \$1,200.00 in cash. He drew  
 15 numerous bare footprints on the floor of the market, leading out the door, with the slogan  
 16 “C-YA!” next to the door. Presentence Report, ¶¶ 22-24.

17 **Eastsound, Feb. 10, 2010: Cirrus stolen from Anacortes (Count 5), with damaged  
 18 landing gear; footprint and “C-YA!” graffiti at Homegrown Market**



25 When the Cirrus was searched, police found a yellow notepad page that Mr.  
 26 Harris-Moore had folded up and evidently dropped as he fled. The notes included what  
 27 appeared to be plans for him meet up and travel with persons nicknamed “Chad” and  
 28 “#3”. There were also aircraft weight calculations, distances between ports, plans to

1 acquire vessels at various ports, and zip codes for checking marine forecasts. Harris-  
 2 Moore wrote notes including “Enhance after leaving Rosario, if possible leave on a long-  
 3 range yacht,” and warnings such as “Cop possibly lives in marina @ DH” (Deer Harbor)  
 4 and “Victoria, BC? Delta, BC? Heavy security / Marine patrols until Olympics done!”

5 During the next few months, Mr. Harris-Moore committed a string of burglaries on  
 6 Orcas Island. These included another attempt to burglarize the Ace Hardware, and  
 7 repeated burglaries at the home of the P. family. In early May, 2010, it was discovered  
 8 that Mr. Harris-Moore had created a hiding space at the Eastsound Airport, in a concealed  
 9 area near the roof of an aircraft hangar that also belonged to the P. family.

10 **Eastsound airport “hangar hide,” May 2010:  
 11 Items stolen from P. residence; handgun (Count 4) stolen from Granite Falls**



12 The existence of this “hangar hide” likely played a large role in his ability to commit  
 13 crimes in Eastsound without being caught. Inside it were the manual for the Anacortes  
 14 SR22 (Count 5), a note with phone numbers for Mr. Harris-Moore’s mother and aunt, and  
 15 the Jennings .22 pistol stolen from Granite Falls in October 2009 (Count 4). Presentence  
 16 Report, ¶¶ 22, 25-26.

17 **D. Mr. Harris-Moore’s Crimes in 2010: Travel East**

18 In May 2010, after the hangar hide was discovered, Mr. Harris-Moore left Orcas  
 19 Island on the trip that would eventually result in his capture in the Bahamas. As he  
 20 traveled from Washington to Oregon and east to Indiana, there are no known instances in  
 21 which Mr. Harris-Moore acquired a vehicle legally. Instead, he followed a pattern of  
 22

1   stealing a vehicle, driving it to a location near a small airport, burglarizing the airport  
 2   while looking for a plane to steal, and (when unsuccessful) stealing another vehicle, often  
 3   one stored at an airport by a pilot or a rental car company. *See* Presentence Report, ¶ 29.  
 4   It is likely that he committed so many airport burglaries because he was only capable of  
 5   stealing a fueled Cessna or Cirrus, with the Garmin G-1000 cockpit system, with the keys  
 6   stored in or near the aircraft.

7   Using a series of stolen boats, he traveled from Orcas Island to Lopez Island  
 8   around May 15, to Whidbey Island, and to the Olympic Peninsula on May 28. He stole a  
 9   Nissan to travel to the Mason County Airport near Shelton, and then stole a Ford Explorer  
 10   to drive to Ilwaco, Washington, at the mouth of the Columbia River. Around May 31, in  
 11   Raymond, he left a note at a veterinary clinic with a \$100 cash “donation.”

12   **Olympic Peninsula, May 31, 2010: note at veterinary clinic in Raymond, WA**

13  
 14   Drove by, had some extra  
 15   cash. Please use this money  
 16   for the care of animals  
 17   —Colton Harris-Moore  
 18   (AKA: “The Barefoot Bandit”)  
 19   Camano Island, WA

20   In Ilwaco, on May 31, Mr. Harris-Moore stole a 34’ boat and piloted it across the river to  
 21   Warrenton, Oregon (Count 6), to a dock 1.5 miles from the Astoria Regional Airport.  
 22   *See* Presentence Report, ¶¶ 27-28.

23   Mr. Harris-Moore drove from Oregon east to Idaho. Around June 11, in Star,  
 24   Idaho, near the Snake River Skydiving Airport, Mr. Harris-Moore stole a 2006 Ford F-  
 25   150 pickup. It was later recovered almost 350 miles east in Driggs, Idaho, where Mr.  
 26   Harris-Moore burglarized the Driggs airport and stole a gray Cadillac Escalade from a  
 27   hangar. That Cadillac was recovered 200 miles east in Cody, Wyoming, abandoned on a  
 28   street corner less than half a mile from the Yellowstone Regional Airport.

**Stolen vessel, Warrenton, OR, June 1 (Count 6); Escalade, stolen from Driggs, ID, around June 12, recovered near airport in Cody, WY**



Around June 13, in Buffalo, Johnson County, Wyoming, 180 miles east of Cody, Mr. Harris-Moore stole a red Lincoln pickup from a house, and abandoned it near the Johnson County Airport. Plea Agreement, ¶ 12; Presentence Report, ¶¶ 30-35.

Around June 13, in Lawrence County, South Dakota, just over the Wyoming border and about 160 miles east of Buffalo, Mr. Harris-Moore burglarized the Spearfish (Black Hills) Airport and stole a 2008 Ford belonging to R.A. He traveled 200 miles to Pierre, South Dakota, where on June 15 he burglarized the Pierre Regional Airport and stole a silver Ford Edge SUV. *Id.*

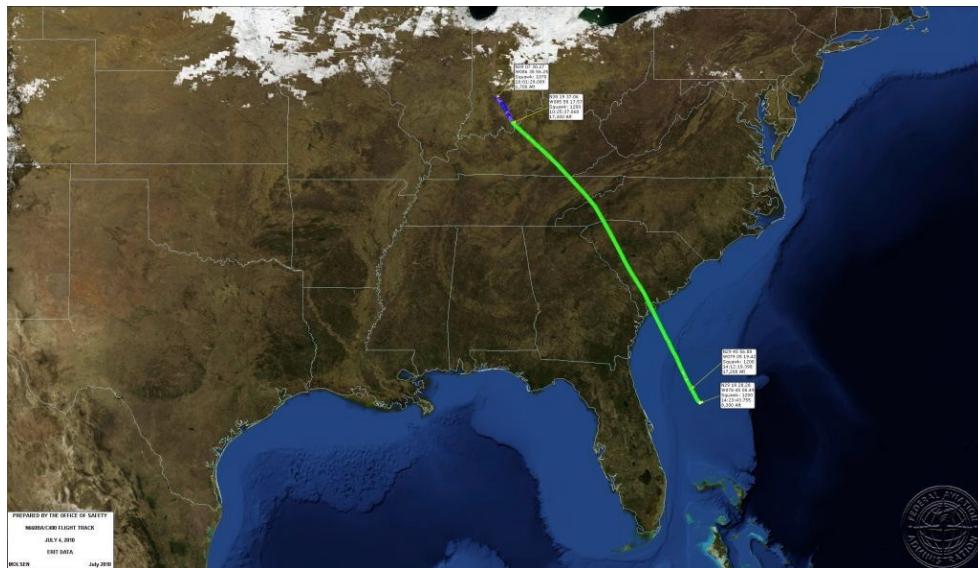
From Pierre, Mr. Harris-Moore drove 250 miles southeast to Yankton, SD. He broke into the home of the K. family, which is less than a third of a mile away from the Chan Gurney Memorial Airport, across an open field. On Friday, June 18, the K. family returned home from a vacation in the middle of the night and surprised Harris-Moore, who had been taking a shower. Mr. K chased Harris-Moore down into the basement. Harris-Moore shined a red light at Mr. K that appeared to be a laser weapon sight, and threatened to shoot Mr. K if he did not get out of the house. Mr. K and his family retreated, and Harris-Moore apparently escaped through a basement window.

While Yankton police searched for him, he stole a Toyota Sequoia, and fled 60 miles south to Norfolk, Nebraska. In Norfolk, Mr. Harris-Moore burglarized the Karl

1 Stefan Memorial Airport and stole a 2008 Cadillac Escalade. He drove the Escalade  
 2 about 260 miles east to Pella, Iowa, just past Des Moines, arriving around June 21. In  
 3 Pella, he burglarized the airport and stole cash and a Dodge Caravan. From Pella, Mr.  
 4 Harris-Moore followed his pattern almost 500 miles farther east, through Iowa and  
 5 Illinois, until he arrived at the Monroe County Airport in Bloomington, Indiana, around  
 6 June 27, 2010. Presentence Report, ¶¶ 38-43.

7 It appears that Mr. Harris-Moore spent about a week camped out in a grove of  
 8 trees within the Monroe County Airport's perimeter fence, monitoring aircraft operations  
 9 and waiting for a plane to steal. During this time, he broke into several hangars. Finally,  
 10 around July 3, the plane that Mr. Harris-Moore was waiting for arrived: a refueled Cessna  
 11 Corvalis, equipped with the G-1000 cockpit system, with the key stored in the aircraft for  
 12 maintenance work. The Corvalis belonged to J.M. and was worth over \$600,000. On the  
 13 morning of July 4, 2010, Mr. Harris-Moore broke into J.M.'s hangar to steal the aircraft.  
 14 He shot a 36-minute video out the cockpit window as he started the engine, worked with  
 15 the instruments, taxied to the runway, and took off. Presentence Report, ¶¶ 43-44.

16 **July 4, 2010 (Count 7): flight path from Bloomington, IN, towards the Bahamas**



27 During his approximately 5 ½ hour, 1100 mile flight, he also shot a video as he crossed  
 28 over the coast of South Carolina, and another as he approached islands in the Bahamas.

1      **July 4, 2010 (Count 7): Harris-Moore films Cessna N660BA's cockpit display**  
 2      **over South Carolina; N660BA crashed on Great Abaco Is., Bahamas**



9      After crashing the aircraft on Great Abaco Island in the Bahamas, Mr. Harris-Moore  
 10     spent another week on the run, during which the FBI offered a \$10,000 reward for his  
 11     capture. He stole a boat and traveled to a second island, Eleuthera. In the early morning  
 12     of Sunday July 11th, Mr. Harris-Moore was spotted at a marina on Eleuthera. He tried to  
 13     escape in a stolen boat, but police pursued him, and Mr. Harris-Moore ran aground.  
 14     Police shot out the motors of his boat with an Uzi and a shotgun. Mr. Harris-Moore, who  
 15     was carrying a .380 semiautomatic pistol stolen from an unknown location, threatened to  
 16     shoot himself rather than be captured, but finally surrendered to police--after dumping a  
 17     stolen MacBook computer in the ocean. Presentence Report, ¶ 44.

18      **July 11, 2010: Harris-Moore at marina, running with pistol,  
 19     minutes before his arrest**



1 On July 14, 2010, Mr. Harris-Moore was expelled from the Bahamas and arrested in  
 2 Miami. Presentence Report, ¶ 44. The United States has received information suggesting  
 3 Mr. Harris-Moore accumulated a five-figure cash hoard, but lost it during his trip east.

4 **E. Recent Statements by Mr. Harris-Moore**

5 Since his arrest July 14, 2010, Mr. Harris-Moore has spent most of his time  
 6 detained at the Federal Detention Center in Seatac, Washington. FDC inmates are  
 7 informed that if they choose to make personal telephone calls or use email, they may be  
 8 monitored. There is no expectation of privacy or attorney-client privilege associated with  
 9 the use of the FDC email system.

10 Mr. Harris-Moore has made a number of statements, in monitored emails and  
 11 telephone calls to friends and relatives, that appear inconsistent with the representations  
 12 he has made in his Letter to the Court. The United States submits that these statements  
 13 should be taken into account in evaluating Mr. Harris-Moore's level of acceptance of  
 14 responsibility for his crimes. The following are excerpts from Mr. Harris-Moore's Letter  
 15 to the Court, reprinted alongside related statements from his monitored emails and calls.

16 The state charges against Mr. Harris-Moore in Island, San Juan, and Snohomish  
 17 Counties were the subject of a consolidated plea and sentencing hearing held December  
 18 16, 2011, in Island County Superior Court in Coupeville. The Island and San Juan  
 19 County cases were presented to the Court by Island County Prosecutor Greg Banks and  
 20 San Juan County Prosecutor Randy Gaylord, respectively. Concerning the December 16  
 21 proceeding in Coupeville, Mr. Harris-Moore wrote:

22 "I would like to express my sincerest apologies to all victims. I had  
 23 absolutely no right to deprive my victims of their property or to enter their  
 24 homes . . . I know now that people did in fact feel terrorized . . . scared in  
 25 their own homes. I can only try to put into mere words my feelings on the  
 matter, and the loss of self-respect after having been responsible for that.  
 To this end, I have plead guilty and accepted responsibility for these  
 actions."

26 Harris-Moore's Letter to the Court, December 13, 2011, at 4

1        “[My lawyers] no doubt fought their asses off in Coupeville. They weren’t  
2        having NONE of what Unethical Greg Banks or that complete FOOL  
3        Randy Gaylord (Gaylord, really????) had to say. Totally UNDID  
4        everything they said. Those guys looked like COMPLETE FOOLS and  
5        asses.”

6        Harris-Moore email to E.A., December 25, 2011

7        Mr. Harris-Moore’s statements on surviving his first airplane theft, and the sentence  
8        imposed December 16 by the Superior Court:

9        [On November 11, 2008,] “I fought and flew for my life . . . to this day I  
10       remain somewhat amazed I am still alive. Once I regained control of the  
11       aircraft . . . I do believe that I was sandwiched between mountains at that  
12       point, once again having made it out of a situation all odds said I shouldn’t  
13       have.”

14       Harris-Moore’s Letter to the Court, December 13, 2011, at 2-3

15       “Friday [December 16] marked the absolute climax of what was the worst  
16       time of my life; a time when I sat at the entrance to a tunnel that could  
17       have lasted years. When all the acting and spreading of high propaganda  
18       on the part of the state was over and my lawyers argued the true facts, the  
19       judge gave me a much-appreciated recognition and validation, calling my  
20       story a ‘triumph of the human spirit.’ She wasn’t having none of the weak  
21       argument the prosecution tried to peddle, and ended up handing down a  
22       sentence that was the lowest possible within the range . . . Once again, I  
23       made it through a situation I shouldn’t have[.]”

24       Harris-Moore email to J.L., December 22, 2011

25       Also regarding the sentences to be imposed in his criminal cases:

26       “Your Honor, the term of my sentence which you hand down, I will serve  
27       with humility. I was wrong and I made mistakes beyond what words can  
28       express.”

29       Harris-Moore’s Letter to the Court, December 13, 2011

30       “So the citizens (and sheriffs) are appeased, justice is served. It’s all  
31       political. I’m thankful for the judge saying what she did, but at the same  
32       time her words were greater than her actions - she had the ability as  
33       invested in her by the people to create change, and the opportunity to stand  
34       up with compassion, but didn’t reach that potential.”

35       Harris-Moore email to B.D., December 29, 2011

36       “[T]he sentence was at the lowest-end of the range . . . And I’ll end up  
37       doing less than half of that, too. I won’t be out tomorrow, but I have no  
38       doubt I will emerge unscathed, with my plans back on track. Just a matter  
39       of time, no doubt.”

1 Harris-Moore email to E.A., December 24, 2011  
2

3 Regarding his aircraft thefts, and “glamorizing” his crimes:

4 “I will continue to write and correspond with the individuals who have  
5 been inspired by my story . . . not to view me as a role model or what the  
6 media has created, but instead to learn from my mistakes and follow their  
7 own dreams . . .

8 I hope that nothing I have said [in this letter] is misconstrued - though I  
9 described in detail my first flying experience, in no way whatsoever am I  
10 ‘glamorizing’ that event or anything else I have done.”

11 Harris-Moore’s Letter to the Court, December 13, 2011, at 5, 6

12 “[T]he things I have done as far as flying and airplanes goes, is amazing.  
13 Nobody on this planet have done what I have, except for the Wright  
14 brothers.”

15 Harris-Moore email to J.F., August 4, 2011

16 [I]f someone I thought I was friends with or could trust doesn’t value trust  
17 or that friendship . . . I’ll just say ‘see ya’, or more accurately, CYA!”

18 Harris-Moore email to E.A., December 25, 2011

19 Concerning the law enforcement agencies that investigated the case against him,  
20 including Island County Sheriff Mark Brown, Mr. Harris-Moore stated:

21 “I would also like to extend my apologies to . . . the Island County and San  
22 Juan County Sheriffs Office, who I know were only doing their jobs.”

23 Harris-Moore’s Letter to the Court, December 13, 2011, at 4

24 [At court December 16], “the more people I have from my camp the better,  
25 because that’s just one less seat that will be filled by the media vermin or  
26 the swine, the king swine himself, Mark Brown.”

27 Harris-Moore telephone call to P.K., December 9, 2011

28 Mr. Harris-Moore has criticized the State of Washington’s arguments that he should  
29 receive a sentence at the high end of the range applicable to his crimes as an unjustified  
30 attempt to “destroy” his future:

31 “This past 1.5 years has been a mixture of ridiculous and obscene, which  
32 equals complete fiasco. [The state sentencing was] the prosecutors’  
33 desperate attempt to make me out to be the worst person in the world . . . I  
34 literally cannot fathom how someone could actually wish misery on  
35 another person, let alone proactively promote a turn of events that would

1 get them a satisfaction and ‘happiness’ through putting someone in a cage.  
 2 I can see but don’t understand what would compel someone to have this  
 3 mindless drive to ruin another persons life. . . someone tries to take your  
 4 life away from you, destroy your future, and is so audacious as to feel  
 justified in that cause.”

5 Harris-Moore email to N.P., December 29, 2011

6 Regarding his control over his actions:

7 “Your Honor, I don’t know where I could have broken the cycle. Each step  
 8 of the way, I felt that I was more and more entrenched with a path, and the  
 situation had taken a life of its own.”

9 Harris-Moore’s Letter to the Court, December 13, 2011, at 3-4

10 “In [November and December of 2011] I feared for my life - not like I did  
 11 when I was on the run; where I was in full control of my life, and  
 ultimately, my death- but rather from other (people) wanting to control my  
 12 life and impose a sentence of years. Years spent unfree, captive, held  
 against my will.”

13 Harris-Moore email to J.L., December 22, 2011

#### IV. SENTENCING GUIDELINES CALCULATIONS

14 The United States generally agrees with U.S. Probation’s calculation of the  
 15 advisory Sentencing Guidelines range, although it believes that at least one enhancement  
 16 not imposed by U.S. Probation should apply to Mr. Harris-Moore. For that reason, the  
 17 United States calculates Mr. Harris-Moore’s total offense level as 24, not 23, yielding an  
 18 advisory Guidelines range of 77 to 96 months, rather than U.S. Probation’s 70 to 87  
 19 month range. Because of the relatively complicated nature of the Guidelines calculation  
 20 in this case, the government will set forth its reasoning in detail.

##### A. Count 1: Bank Burglary

21 The parties agreed in the Plea Agreement, and U.S. Probation concurs, that the  
 22 base offense level for the Count 1 bank burglary should be 12, under USSG §2B2.1(a)(2).

23 The United States submits that pursuant to Guidelines section 2B2.1(b)(1), the  
 24 offense level associated with the Count 1 bank burglary should be increased by 2, because  
 25 the offense involved “more than minimal planning.” Mr. Harris-Moore’s scheme to  
 26 attack the ATM safe at Islanders Bank in Eastsound involved at least three burglaries.  
 27

1 Before the bank burglary, Mr. Harris-Moore burglarized the Ace Hardware store and the  
 2 Orcas Homegrown Market in Eastsound, stealing tools that he believed would be useful  
 3 in cracking the ATM safe. *See* Plea Agreement (Dkt #50), ¶ 12, page 10 (Ace Hardware  
 4 burglary). Many of the tools were recovered at the bank, abandoned by Mr. Harris-Moore  
 5 when he failed to open the safe. Under the application notes to Guidelines section  
 6 2B2.1(b)(1), committing several other crimes just to set up a charged crime would clearly  
 7 constitute “more than minimal planning.” This justifies the 2-level increase under  
 8 2B2.1(b)(1), making the total offense level 14.

9 **B. Counts 2, 6, and 7: Interstate Transportation of Stolen Aircraft  
 10 and Stolen Vessel**

11 **1. Grouping and Base Offense Level**

12 Although the Plea Agreement (for purposes of clarity) sets forth stipulated base  
 13 offense level and loss amounts for Counts 2, 6, and 7 individually, the United States  
 14 agrees with U.S. Probation that under USSG §3D1.2(d), these counts group for purposes  
 15 of sentencing. For that reason, the base offense level applicable to all three offenses is 6.  
 16 The loss amount for counts 2 (the Bonners Ferry, ID Cessna), 6 (the Ilwaco boat), and 7  
 17 (the Bloomington, IN Cessna) aggregates to more than \$1,000,000 but less than  
 18 \$2,500,000, corresponding to a 16-level increase under USSG §2B1.1(b)(1)(I).

19 **2. Enhancement: Conscious or Reckless Risk of Death or  
 20 Serious Injury**

21 The United States agrees with U.S. Probation that under Guidelines section  
 22 2B1.1(b)(13)(A), the total offense level associated with this group should be increased by  
 23 2, because the aircraft thefts in Counts 2 and 7 involved the “conscious or reckless risk of  
 24 death or serious bodily injury.” *See* Presentence Report, ¶ 60.

25 Mr. Harris-Moore had no pilot’s license or training from a certified instructor, but  
 26 trained himself in the basics of flying single-engine aircraft, and then stole and flew  
 27 multiple aircraft. *See* Defendant’s Letter to the Court, at 2-3. Mr. Harris-Moore has  
 28 admitted that his first flight in a stolen aircraft, on November 11, 2008, made him feel  
 immediately after takeoff that he was “probably going to die.” *Id.* While incarcerated,

1 Mr. Harris-Moore has bragged about the dangerousness of his flights, including those  
 2 charged here:

3 I, as a teenager with no formal education in aviation, was not only able to  
 4 pilot multiple aircraft, fly one over a thousand miles to the Bahamas. Four  
 5 out of the five airplanes were flown through inclement weather or night  
 6 time- or both, again, without any formal training. I am confident that  
 7 anyone else would have died - you can't just jump in an airplane and fly at  
 8 night or through weather; you HAVE to be instrument-rated, but I wasn't  
 9 and actually taught myself how to fly instrument, which is inconceivable to  
 10 most pilots and ALL instructors.

11 Harris-Moore email to J.F., August 4, 2011. If it was clear to Mr. Harris-Moore by 2008  
 12 that untrained flights in stolen aircraft were potentially fatal to him, it is certain that  
 13 during the commission of Count 2 in 2009 and Count 7 in 2010, he was "conscious" or  
 14 "reckless" that his actions risked "death or serious bodily injury" to himself and others.

15 Mr. Harris-Moore compounded these risks during all of his plane thefts by flying  
 16 the stolen aircraft with no flight plan, and intentionally failing to communicate with air  
 17 traffic control or other aircraft, even when flying at night. In the Idaho and Indiana thefts  
 18 (Counts 2 and 7), his unsafe flights lasted for hours, until he ran the aircraft out of fuel  
 19 and was forced to crash-land them.

20 The Ninth Circuit has repeatedly upheld the district court's imposition of the  
 21 Section 2B1.1(b)(13)(A) enhancement when a defendant's conduct creates a risk of death  
 22 or serious injury, regardless of whether actual harm results. In *United States v. West*  
 23 *Coast Aluminum Heat Treating Co.*, 265 F.3d 986 (9th Cir. 2001), the enhancement  
 24 (under Section 2F1.1, later merged with 2B1.1) was upheld as to a defense contractor that  
 25 falsely certified it had tested military parts, including "flight critical" aircraft parts, to  
 26 rigorous government standards. Although there had been no accidents, the Ninth Circuit  
 27 held that "[w]hen the consequences of failure are catastrophic, a low failure frequency is  
 28 of limited relevance. It is the creation of risk, not the infliction of injury, that is required  
 for the application of this guideline provision . . . even if the ultimate probability of  
 occurrence is found to be relatively low." *Id.* at 992-93; *see also United States v. Awad*,  
 551 F.3d 930, 941-42 (9th Cir. 2009) (enhancement imposed on physician who failed to

1 supervise many patients' treatments in the course of a Medicare fraud scheme, even  
 2 though no patients suffered adverse reactions); *United States v. Johansson*, 249 F.3d 848,  
 3 859-61 (9th Cir. 2001) (trucking company, falsifying logs to conceal drivers' excessive  
 4 road hours, created risk of injury from fatigued drivers even if no accidents resulted).

5 There can be no real dispute that Mr. Harris-Moore's self-trained, clandestine  
 6 flights carried with them a risk of death or serious injury to innocent bystanders, whether  
 7 through a crash into the ground or a mid-air collision. The Ninth Circuit has upheld the  
 8 imposition of the 2-level enhancement under §2B1.1(b)(13)(A) in various situations that  
 9 created less direct danger to the public. The United States agrees with U.S. Probation that  
 10 the Court should impose this enhancement.

11 **3. Enhancement: Possession of a Firearm**

12 The United States further submits that in the alternative to an enhancement under  
 13 Guidelines section 2B1.1(b)(13)(A), for a conscious or reckless risk of death or serious  
 14 injury, the total offense level associated with the group including Count 2 should be  
 15 increased by 2 pursuant to Guidelines section 2B1.1(b)(13)(B), because Mr. Harris-Moore  
 16 possessed a firearm in connection with the Idaho aircraft theft. When Mr. Harris-Moore  
 17 stole P.G.'s Cessna from the Boundary County airport, he was carrying the loaded .32  
 18 pistol that he had stolen from British Columbia. While the enhancement only requires  
 19 that the weapon be possessed, there is every reason to believe carrying this weapon  
 20 facilitated the theft by emboldening Mr. Harris-Moore. As his later actions show, being  
 21 armed made him less concerned about encountering a homeowner or police officer, and  
 22 more assured of his ability to escape. Less than a week after the Bonners Ferry theft, he  
 23 used a stolen pistol to fire a shot to ward off the Snohomish County deputies who were  
 24 chasing him.

25 **4. Enhancement: Use of a Special Skill**

26 The United States submits that pursuant to Guidelines section 3B1.3, the Group 2  
 27 offense level should also be increased by 2 because the offenses in Counts 2 and 7  
 28 involved the use of a "special skill" that "significantly facilitated the commission or

1 concealment of the offense[.]” Mr. Harris-Moore acquired such a skill by training  
 2 himself to fly in single-engine aircraft. The Application Notes to 3B1.3 state:

3 “Special skill” refers to a skill not possessed by members of the general  
 4 public and *usually* requiring substantial education, training or licensing.  
 Examples would include *pilots*, lawyers, doctors, accountants, chemists, and  
 5 demolition experts.

6 Guidelines section 3B1.3, Application Note 4 (emphasis added).

7 This enhancement fits Mr. Harris-Moore’s aircraft thefts in two ways. First, Mr.  
 8 Harris-Moore would not have been able to commit the crimes at all without acquiring the  
 9 skill to take off and fly in the planes. In his Letter to the Court, Mr. Harris-Moore  
 10 describes his intense and prolonged effort to acquire pilot skills:

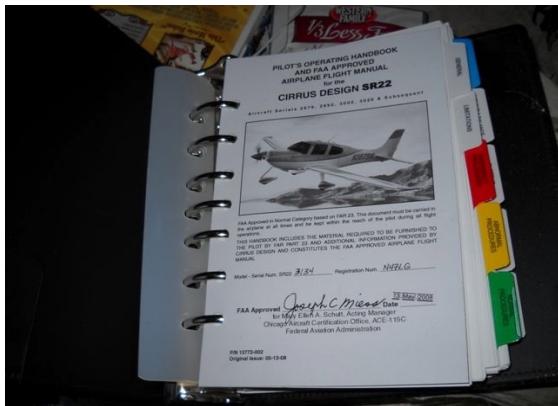
11 During the summer and fall of 2008 . . . I dedicated each day to bicycling  
 12 ten miles a day from a mountain campsite to Orcas Island Airport to see  
 13 planes taking off and landing and on several occasions I stole airplane  
 14 manuals. During the day I was perched on a cliff listening to NAV/COM  
 15 VHF airport frequencies which narrated the comings and goings of  
 airplanes at local airports. I was infatuated with airplane operations and  
 dedicated my days and nights to learning everything I could. The study of  
 the manuals, navigation and avionics manuals, and thousands of online  
 videos of aircraft systems operations through the eyes of the pilots were my  
 16 school.

17 Letter, at 2; *see also* Harris-Moore email to J.F., August 4, 2011 (asserting that his self-  
 18 taught skills were so sophisticated as to be “inconceivable to most pilots and ALL  
 19 instructors.”). Mr. Harris-Moore deliberately avoided legitimate licensing or training  
 20 because he wished to steal aircraft while he was a fugitive from the law. Nevertheless, it  
 21 is clear from his own statements and from the recovered evidence that he spent hundreds  
 22 of hours training himself by reading stolen manuals and watching “thousands” of videos,  
 23 before flying five real aircraft.

24 The Guidelines do not limit the special skill enhancement to people who abuse  
 25 legitimate licenses or genuine professional qualifications. Rather, 3B1.3 encompasses  
 26 skills, like Mr. Harris-Moore’s, that would *usually* require substantial training and  
 27 licensing. In *United States v. Barnes*, 125 F.3d 1287, 1292 (9th Cir. 1997), the Ninth  
 28 Circuit affirmed the application of 3B1.3 enhancement to a defendant who impersonated

1 a licensed physician to practice medicine, holding he “certainly employed a ‘special skill’  
 2 not possessed by members of the general public’ in perpetrating his fraud.”

3 **Evidence of pilot training: Stolen Cirrus flight manual, Eastsound “hangar hide”;  
 4 “Flying in Boundary County” (Idaho) disc case, found on Camano Is., Nov. ‘09**



12 Other Ninth Circuit caselaw supports the imposition of the 3B1.3 enhancement to  
 13 Mr. Harris-Moore. *See, e.g., United States v. Corona-Verbera*, 509 F.3d 1105, 1120-21  
 14 (9th Cir. 2007) (applying enhancement to architect who helped construct drug smuggling  
 15 tunnel). *Corona-Verbera* states that the court applies a two-part test to determine whether  
 16 a skill constitutes a “special skill” under the Guidelines: “First, we determine whether the  
 17 skill is possessed by members of the general public.” If it is not, and has a legitimate  
 18 application outside the criminal context, “[s]econd, we determine whether the skill  
 19 requires substantial training, education or licensing, and is analogous to the skills  
 20 described in the application note.” *Id.* (citing *United States v. Mendoza*, 78 F.3d 460, 465  
 21 (9th Cir. 1996), holding that “driving an eighteen-wheeler [truck] without mishap over a  
 22 period of several years does constitute a special skill because it is a skill well beyond that  
 23 possessed by the general public.”). Mr. Harris-Moore’s skills satisfy both parts of the  
 24 Ninth Circuit’s test.

25 The “special skill” enhancement is also appropriate because the airplane thefts  
 26 were made possible by the special nature of Mr. Harris-Moore’s training and targets. Mr.  
 27 Harris-Moore sought out light aircraft with few security features stored at minimally  
 28 guarded general aviation airports. These aircraft and airports had low security precisely

1 because there are very few people who lack formal pilot training but nevertheless have  
 2 the desire and ability to abscond with a light aircraft. Conversely, virtually no one who  
 3 had gone through the difficulty and expense of acquiring real pilot's training and  
 4 licensing would risk license revocation by stealing someone else's plane.

5 In sum, the skill of piloting light aircraft required substantial training even for Mr.  
 6 Harris-Moore; it is a legitimate skill not possessed by members of the general public; and  
 7 it is among the skills specifically listed in the Application Notes to Section 3B1.3. Mr.  
 8 Harris-Moore's acquisition of his pilot skills "significantly facilitated the commission . . .  
 9 of the offense" of Interstate Transportation of Stolen Aircraft, and the two-level  
 10 enhancement under 3B1.3 should also be applied to this group.

11 **5. Imposition of both the "Risk of Injury" and "Special  
 12 Skill" Enhancements**

13 Mr. Harris-Moore may contend that the Court should not impose both the Section  
 14 2B1.1(b)(13)(A) "risk of injury" and Section 3B1.3 "special skill" enhancements, on the  
 15 theory that if he was a good enough pilot for his skills to be considered "special," he  
 16 could not also have caused a substantial risk of death or injury while flying. The  
 17 enhancements are not mutually exclusive, however. Mr. Harris-Moore learned to fly  
 18 aircraft well enough that it can be called a "special skill," but he still *chose* to fly his  
 19 stolen planes in an especially dangerous manner: avoiding filing flight plans or making  
 20 radio transmissions (even at night), in order to evade detection of his crimes, and flying  
 21 aircraft as far as he could, until he ran out of fuel and crashed (both Counts 2 and 7).

22 In the alternative, if the Court chose to impose the firearm enhancement under  
 23 2B1.1(b)(13)(B) rather than the "risk of injury" enhancement under 2B1.1(b)(13)(A), it  
 24 would be entirely consistent for the Court to also impose the 3B1.3 "special skill"  
 25 enhancement.

26 **6. Group 2 totals**

27 In total, for the group that includes Counts 2, 6, and 7, there is a base offense level  
 28 of 6 and an increase of +16 for the loss amount. The Court should also apply a 2-level

enhancement under either section 2B1.1(b)(13)(A), for a conscious or reckless risk of death or injury, or 2B1.1(b)(13)(B), for possession of a dangerous weapon; and a 2-level enhancement under section 3B1.3, for use of a special skill. These give the group an adjusted offense level subtotal of 26.

**C. Counts 3 and 4: Firearms Offenses**

The United States agrees with U.S. Probation that Counts 3 and 4 group under USSG §3D1.2(d). The Plea Agreement specifies that the base offense level as to each count is 14; that each count should receive a 2-level increase under USSG §2K2.1(b)(4) for involving a stolen firearm; and that each count should receive a 4-level increase under USSG §2K2.1(b)(6) because the firearms were possessed in connection with other felony offenses. The United States agrees with U.S. Probation that the adjusted offense level subtotal for this group is 20.

**D. Count 5: Airman's Certificate Violation**

The United States agrees with U.S. Probation's conclusion that the Count 5 offense may be considered an aggravating circumstance and/or sentencing factor under 18 U.S.C. § 3553(a), and/or may be grouped with the Counts 2 and 7 offenses.

**E. Total Offense Level Calculation**

Applying all of the Guidelines enhancements listed above, the government's total offense level calculation is as follows:

<b>Group 1: Count 1- Bank Burglary</b>	
Base offense level, §2B2.1	12
More than Minimal Planning, §2B2.1(b)(13)(A)	+2
<b>Group 1 / Count 1 subtotal</b>	<b>14</b>
<b>Group 2: Counts 2, 6, and 7 - Interstate Transportation of Stolen Aircraft and Stolen Vessel</b>	
Base offense level, §2B1.1 (based on aggregate loss amount)	6

1	Increase for aggregate loss amount between \$1,000,000 and \$2,500,000, §2B1.1(b)(1)(I)	+16
2		
3	Increase for conscious or reckless risk of death or serious bodily injury, 2B1.1(b)(13)(A), or possession of a dangerous weapon, 2B1.1(b)(13)(B)	+2
4		
5	Increase for use of a special skill, 3B1.3	+2
6	<b>Group 2 / Counts 2, 6, and 7 subtotal</b>	<b>26</b>
7		
8	<b>Group 3: Counts 3 and 4 - Firearms Offenses</b>	
9	Base offense level, §2K2.1	14
10	Offenses involving stolen firearms, §2K2.1(b)(4)	+2
11	Possession in connection with another felony offense, §2K2.1(b)(6)	+4
12	<b>Group 3 / Counts 3 and 4 subtotal</b>	<b>20</b>
13		
14	<b>Multiple Count Adjustment, §3D1.4</b>	
15	Group 1: Adjusted Offense Level 14	0 Units
16	Group 2: Adjusted Offense Level 26	1 Unit
17	Group 3: Adjusted Offense Level 20	½ Unit
18	Subtotal of Multiple Count Adjustment Units	1 ½ Units
19	<b>Multiple Count Increase in Total Offense Level</b>	<b>1 Level</b>
20		
21	Applicable Group Adjusted Offense Level: Group 2 (highest applicable group)	26
22	<b>Combined Adjusted Offense Level</b>	<b>27</b>
23	<b>(Group 2 = 26, +1 Level Multiple Count Increase)</b>	
24	Adjustment for Acceptance of Responsibility, §3E1.1(b)	-3
25	<b>Total Offense Level</b>	<b>24</b>
26		
27		
28		

#### **F. Criminal History Category**

The United States agrees with U.S. Probation's calculation of Mr. Harris-Moore's criminal history category as IV. This is based on one criminal history point for his March 2005 convictions for theft; one point for his July 2006 conviction for burglary; two points for his June 2007 convictions for burglary; three points for his December 2011 convictions in Island County; and two points for committing the instant offenses while on escape status, under Guidelines section §4A1.1(d), for a total of nine points.

It should be noted that this history could be even higher, except that so many of Mr. Harris-Moore's felonies were consolidated as relevant conduct in this plea, or were the subject of the single, consolidated plea in Island County Superior Court on December 16, 2011.

## **G. Advisory Guidelines range**

Based on a total offense level of 24 and a criminal history category of IV, the advisory Guidelines range calculated by the United States is 77 to 96 months' imprisonment.

## V. GOVERNMENT'S SENTENCING RECOMMENDATION

The United States respectfully recommends a sentence of 78 months' imprisonment. This sentence is at the high end of the range in the Plea Agreement in which the parties agreed to make their recommendations. It falls in the middle of the Guidelines range calculated by U.S. Probation, however, and near the low end of the Guidelines range calculated by the United States. The United States also agrees with U.S. Probation's recommendation that the federal sentence of imprisonment be made consecutive to Mr. Harris-Moore's undischarged term of state imprisonment. As set forth below, this recommended sentence is appropriate in light of the facts and circumstances of the case, including factors set forth in 18 U.S.C. § 3553(a).

1           **A. The Nature and Circumstances of the Offenses (3553(a)(1))**

2           Through careful planning and dogged persistence, Mr. Harris-Moore committed  
 3 dozens of felonies that caused well over a million dollars in damages. He scouted and  
 4 targeted poorly defended homes, businesses, vehicles and aircraft. Most were in isolated  
 5 and rural areas, where crime rates were otherwise low, law enforcement was usually far  
 6 away, and his chances of escape were high. He stole as much cash as he could find.  
 7 Where there was expensive loot, like an ATM safe or an aircraft, he engaged in multiple-  
 8 step attacks, stockpiling stolen tools or digesting instructional videos in advance. He pre-  
 9 planned escape and self-protection strategies, including building his concealed hiding  
 10 place at the Eastsound airport, and stealing multiple guns. He carried those guns, fired  
 11 one to escape from police, and threatened to shoot a homeowner who cornered him.

12           When Mr. Harris-Moore was searching for an aircraft to steal, he went from one  
 13 rural airport to the next, over and over again, breaking into any businesses or homes that  
 14 he thought would sustain his crime spree without causing him to be caught. He stole any  
 15 property that he felt like using and could carry away with him. As he fled with the  
 16 vehicles he stole, he was indifferent to the damage he caused. He wrecked aircraft, left  
 17 boats adrift on the water, and left abandoned cars open to the elements.

18           Mr. Harris-Moore employed these carefully developed tactics in service of a larger  
 19 strategy: to escape from the justice system to the Caribbean, using a stolen plane, carrying  
 20 his stolen cash. This was his plan no later than the fall of 2009, and possibly earlier. By  
 21 July of 2010, through a diligent series of burglaries and vehicle thefts, he was finally able  
 22 to put that plan into practice. He did all of this while a fugitive from justice.

23           There is no explanation for this crime spree other than Mr. Harris-Moore's  
 24 decision to live an exciting and profitable life on the lam. It appears most likely that once  
 25 he had stolen his first airplane in 2008, Mr. Harris-Moore simply decided to enjoy his  
 26 freedom, his stolen planes and cash, and the newfound Internet celebrity status glowing  
 27 on his stolen computers, for as long as he possibly could before having to face any  
 28 punishment.

1           **B. The History and Characteristics of the Defendant (3553(a)(1))**

2           Mr. Harris-Moore had an extensive juvenile criminal record even before the start  
 3 of his current crime spree. As the Presentence Report notes, Mr. Harris-Moore had been  
 4 committing crimes, and had repeatedly been in the criminal justice system, since his early  
 5 teens. Notably, when he was arrested for multiple residential burglaries in 2007, he was  
 6 caught with a .45 caliber handgun. Presentence Report, ¶¶ 94-95. He was serving a  
 7 three-year juvenile sentence for those burglaries when he escaped in April of 2008.

8           As noted above, in his Letter to the Court, Mr. Harris-Moore claims that stealing  
 9 his first airplane while he was a fugitive, November 11, 2008, “changed my life  
 10 forever . . . opened my mind and gave me insight into not only myself, but the world;  
 11 valuable life lessons that I believe I couldn’t have learned any other way.” Letter to the  
 12 Court, at 3. He also claims that he did not stop committing crimes after that theft because  
 13 “I don’t know where I could have broken the cycle” and “the situation had taken [on] a  
 14 life of its own.” *Id.*

15           These statements do not come close to justifying Mr. Harris-Moore’s decisions  
 16 after November 11, 2008. With his life supposedly “changed forever,” he picked up right  
 17 where he left off before his juvenile sentence, committing new residential burglaries. In  
 18 fact, his crimes escalated sharply, as he now chose to steal multiple vehicles and aircraft,  
 19 and additional firearms. As noted above, contrary to his claim that “the situation” had a  
 20 life of its own, he admitted in a recent email to a friend that “on the run . . . I was in *full*  
 21 *control* of my life, and ultimately, my death.” Email to J.L., Dec. 22, 2011 (emphasis  
 22 added).

23           Mr. Harris-Moore states that during his crime spree, “I knew my intentions and  
 24 that I would never hurt anyone or intentionally scare someone, and I mistakenly assumed  
 25 people knew that as well.” Letter to the Court, at 4. These claims are belied by his  
 26 actions. When threatened or cornered, Harris-Moore repeatedly and intentionally  
 27 threatened others in order to avoid capture and keep his crime spree going. He pepper  
 28 sprayed the sheriff’s deputy on Orcas in fall of 2008. He fired a shot near sheriff’s

1 deputies outside Granite Falls, and he threatened to shoot Mr. K in Yankton with what  
 2 appeared to be a laser-sighted gun. When no one shot back at him, Harris-Moore took  
 3 this restraint as an invitation to continue running away, so he could keep committing his  
 4 crimes. Only the Bahamian police riddling his stolen boat with gunfire finally convinced  
 5 him to stop, and even then, he did so only after bluffing that he would kill himself before  
 6 going back to jail.

7 Mr. Harris-Moore has denied that he wanted any of the fame associated with his  
 8 crimes, but here too his actions suggest otherwise. He did not take the time to draw bare  
 9 footprints in a business he was burglarizing, and leave a signed “donation” at a veterinary  
 10 clinic, because he hated the attention and publicity those messages were sure to provoke.  
 11 He did not videotape himself driving across the country in stolen vehicles, and in the  
 12 cockpit flying to the Bahamas, because he was frightened of what he was doing. Instead,  
 13 his own statements and actions reveal that while he was on the run, he was regularly  
 14 checking on his rising celebrity on Facebook and the Internet.

15 As his mitigation materials suggest, Mr. Harris-Moore had a very difficult  
 16 childhood, and may suffer from multiple medical problems. But nothing in his materials  
 17 suggests he was ever unable to tell right from wrong. Instead, he chose to ignore the  
 18 wrongfulness of his conduct. His crimes were entirely self-interested and greedy. His  
 19 entertainment, enrichment, and continued freedom were his highest priorities. They were  
 20 far more important to him than the safety of other people, the comfort of other people in  
 21 their homes, or the security of anyone else’s property.

22 **C. The Seriousness of the Offenses (3553(a)(2)(A))**

23 Many of Mr. Harris-Moore’s crimes are considered “economic,” and are calculated  
 24 under Guidelines section 2B1.1. The high monetary losses caused by Mr. Harris-Moore  
 25 are obvious. But the statements submitted by Mr. Harris-Moore’s victims highlight that  
 26 even these “economic” crimes caused danger to the public, and caused psychological  
 27 damage to their victims that cannot be cured through monetary restitution.

1       Victim P.G., the owner of one of the stolen aircraft (Count 2), speaks perceptively  
 2 of the danger Mr. Harris-Moore caused through his unlicensed flights. P.G. writes that  
 3 “[i]n Colton’s hands, the airplane was a dangerous weapon set loose by one young man  
 4 with no conscience on an innocent public.” Victim Impact Statement of P.G., at 1.

5       At the Superior Court sentencing on December 16, victim R.G., whose home was  
 6 burglarized and whose firearm was stolen (Count 4), spoke of the impacts of Mr. Harris-  
 7 Moore’s crimes:

8       [T]his is life-changing. We have to install a security system in our house.  
 9 We have to start worrying what’s around our house . . . I mean, it’s -- it’s  
 10 very uneasy. You’ve been violated . . . they say, well, he hasn’t hurt  
 anybody. Well, he does hurt people. It’s a lot of hurt to know, can you  
 11 leave your wife at home on a weekend? Can she feel safe in your own  
 home? Do you have to look and see who’s running through the windows  
 every time you’re coming up your driveway?

12 Transcript, Island County Superior Court, December 16, 2011, at 49-50.

13       Victims S.J. and M.M. live in Idaho, hundreds of miles apart from each other, but  
 14 both were burglarized by Mr. Harris-Moore: S.J. in September 2009, and M.M. in June  
 15 2010. Both describe very similar reactions to these crimes, such as their children being  
 16 fearful of burglars, and not wanting to go into unoccupied spaces by themselves. They  
 17 write that they have experienced a significant loss of trust since the burglaries, and feel  
 18 like they must always lock doors that were left open before they encountered Mr. Harris-  
 19 Moore. *See* Victim Impact Statement of S.J.; Victim Impact Statement of M.M.

20       **D. Promoting Respect for the Law, Deterring Criminal Conduct, Avoiding  
 21 Unwarranted Disparities, and the Need for Just Punishment  
 22 (3553(a)(2) - (a)(6))**

23       The sheer number of crimes involved in this case warrants the 78 month sentence  
 24 recommended by U.S. Probation and the United States. As noted above, seven felonies  
 25 were pled to in the Plea Agreement. At least 27 other crimes, mostly felonies, are  
 26 recognized as relevant conduct. No other case is exactly like this one, but in its number  
 27 and scope of crimes, it is most similar to the complex fraud schemes or drug trafficking  
 28 conspiracy cases that come before this Court. Any sentence of less than 78 months would

1 raise the possibility that the dozens of felonies being punished in this sentencing would  
 2 receive an excessively light punishment, relative to those imposed on other defendants  
 3 with similar records. A lighter sentence could also afford an inadequate deterrent to the  
 4 criminal conduct of others, by failing to emphasize the seriousness of Mr. Harris-Moore's  
 5 conduct.

6 **E. Sentencing Guidelines (3553(a)(4))**

7 As discussed elsewhere in this Memorandum, the 78 month sentence  
 8 recommended by the United States is in the middle of the Guidelines range calculated by  
 9 U.S. Probation, and at the low end of the Guidelines range calculated by the United  
 10 States. These calculations are based upon the offenses charged in the Superseding  
 11 Information, and do not specifically include the offenses acknowledged as relevant  
 12 conduct in the Plea Agreement's Statement of Facts. Although the Guidelines are not  
 13 binding upon the Court, they indicate the reasonableness of the proposed sentence.

14 **F. Restitution to Victims (3553(a)(7))**

15 The United States requests that the Court enter the government's proposed Order  
 16 of Restitution. By agreement of the parties, this will direct restitution to three groups of  
 17 victims: victims of crimes listed in the federal Superseding Information; victims of crimes  
 18 listed as relevant conduct in the Plea Agreement; and victims of crimes named in the  
 19 consolidated pleas and restitution orders entered in Island County Superior Court on  
 20 December 16. Under 18 U.S.C. § 3664(j)(1), the parties submit that the order should  
 21 provide that uninsured losses receive first priority. The proposed Order of Restitution is  
 22 still being finalized, but will amount to not less than \$1,271,236.60.

23 The United States expects that virtually all restitution that may be paid any time  
 24 soon will come from the film contract signed by Mr. Harris-Moore. That contract is  
 25 subject to the restrictions and conditions imposed in the Plea Agreement, to make sure  
 26 that it exists solely for the benefit of Mr. Harris-Moore's victims. It is worth noting,  
 27 however, that the film contract is an option contract that has not yet been fully exercised.  
 28 Even if the option is exercised, the maximum net amount of funds that will come from the

1 contract will likely be just over \$1 million. This will not be sufficient to compensate all  
 2 the victims for all of the damage that Mr. Harris-Moore caused them. Thus, no matter  
 3 what happens, it is quite possible that the victims of Mr. Harris-Moore's crimes will never  
 4 receive full restitution for their pecuniary losses.

5 It is also important to note that any restitution that flows from the film contract to  
 6 the victims is really just additional proceeds of Mr. Harris-Moore's crimes. Simply put,  
 7 Mr. Harris-Moore is selling the story of his crimes to a film company. This fact made the  
 8 idea of allowing him to make that sale extremely problematic for the government. The  
 9 United States wanted to do everything it could to ensure as much restitution as possible  
 10 went to the victims. At the same time, the last thing the government wanted to do was to  
 11 support anyone, including a filmmaker, who intended to glorify what Mr. Harris-Moore  
 12 did, or gloss over the damage he caused to the public. Given those competing concerns,  
 13 the United States worked hard to ensure through the Plea Agreement, and its work with  
 14 the Special Master, that what Mr. Harris-Moore would be allowed to sell would only  
 15 benefit his victims, and could not easily be used for the sole purpose of celebrating his  
 16 crimes.

17 All parties can be glad that the film, if made, will substantially fund restitution.  
 18 But the film is a relatively cost-free effort for Mr. Harris-Moore, which merely requires  
 19 him to say whatever he wants, about himself and his crimes, to a screenwriter. It will not  
 20 provide full restitution, and it should not justify any substantial reduction in his sentence.

21 **G. Incarceration, Concurrent and Consecutive Sentencing, and  
 22 Application of Guidelines section 5G1.3(a)**

23 Under paragraph 9 of the Plea Agreement (Dkt #50), the United States hereby  
 24 requests that the Court recommend that the Bureau of Prisons "designate a Washington  
 25 state facility as the place at which Mr. Harris-Moore shall serve his federal sentence,  
 26 pursuant to 18 U.S.C. § 3621(b)." The United States has further agreed to recommend,  
 27 and hereby recommends, that any sentence imposed by the Court in this case be  
 28

1 designated as concurrent with the 87-month sentence imposed December 16 by the  
 2 Superior Court of Washington for Island County.

3 While he committed the crimes in this case, however, Mr. Harris-Moore was a  
 4 fugitive from an undischarged State of Washington juvenile sentence. On June 27, 2007,  
 5 he was sentenced to 52 to 65 weeks' confinement on each of three counts of residential  
 6 burglary. Presentence Report, ¶ 94. When he escaped from the Griffin Home on April  
 7 29, 2008, he had approximately two years remaining on his sentence. Under Washington  
 8 law, Mr. Harris-Moore's new Washington sentence of 87 months (imposed December 16,  
 9 2011) must be served consecutive to the undischarged juvenile sentence, which continues  
 10 in force until Mr. Harris-Moore turns 21, on March 22, 2012. On March 22, 2012,  
 11 therefore, the new 87 month Washington sentence will begin to run.

12 As the Presentence Report notes, Section 5G1.3(a) of the Sentencing Guidelines  
 13 provides:

14 If the instant offense was committed while the defendant was serving a term  
 15 of imprisonment (including work release, furlough, or escape status) . . . the  
 16 sentence for the instant offense shall be imposed to run consecutively to the  
 17 undischarged term of imprisonment.

18 *Id.*; see also Presentence Report, ¶ 145. The imposition of a consecutive sentence under  
 19 Section 5G1.3(a) is not a departure from the Sentencing Guidelines. See *United States v.*  
*20 Fifield*, 432 F.3d 1056, 1061 (9th Cir. 2005). Despite the section's use of the word  
 21 "shall," the Guidelines themselves are advisory, and the Ninth Circuit has held that the  
 22 sentencing court retains the discretion to impose a consecutive, partially concurrent, or  
 23 concurrent sentence. See, e.g., *United States v. Lail*, 963 F.2d 263, 264 (9th Cir. 1992).

24 The United States agrees with U.S. Probation's recommendation that under  
 25 Section 5G1.3(a), the Court should choose to make Mr. Harris-Moore's new federal  
 26 sentence consecutive to his undischarged Washington juvenile sentence. This will avoid  
 27 granting Mr. Harris-Moore double credit for time spent in custody, and will conform to  
 28 the way his state sentences are treated under Washington law. If Mr. Harris-Moore had  
 been arrested by local authorities in the State of Washington, he would not have received

any credit for time spent in custody until he completed his full prior term. The fact that he managed to escape to the Bahamas before being arrested should not result in him serving *less* total time in custody. That would be the result, however, if his time spent in federal custody prior to this sentencing was double-counted towards both his new federal sentence and his prior undischarged state sentence. Effectively, his escape from custody in 2008 would be rewarded with a shorter sentence for the federal crimes he decided to commit while he was a state fugitive.

Thus, following U.S. Probation's recommendation, any sentence of imprisonment imposed by this Court should be made consecutive to Mr. Harris-Moore's previous undischarged Washington conviction under Guidelines section 5G1.3(a). This should mean that Mr. Harris-Moore will receive no credit towards his *federal* term of imprisonment for the federal time he has served to date. But all time Mr. Harris-Moore has spent in federal custody starting on July 14, 2010, up until his 21st birthday on March 22, 2012, *will* be credited towards satisfying his undischarged Washington Department of Corrections sentence that he escaped from in 2008.

## VI. CONCLUSION

Mr. Harris-Moore dedicated intense effort to committing a lengthy string of felonies, for no purpose other than to enrich and amuse himself. He continued perpetrating those crimes, fleeing from one jurisdiction to the next, as long as he possibly could. Nothing about his childhood required him to take these actions. They were his conscious and deliberate choices, and he knew they were wrong. A fair sentence will take into account the significant damage he caused; his indifference to the feelings of his many victims, and to the danger he might be causing the public; his use of threats and stolen guns to avoid capture; and the continuing questions about the true extent of his remorse.

The sentence recommended by the United States and U.S. Probation is entirely reasonable given the number and the nature of Mr. Harris-Moore's crimes, and it is

1 appropriate under the factors set forth in 18 U.S.C. § 3553(a). The 78 month term is in  
2 the middle of the Guidelines range calculated by U.S. Probation, and near the low end of  
3 the Guidelines range calculated by the United States. This adequately recognizes the  
4 mitigating factors, such as Mr. Harris-Moore's difficult childhood, that are present in this  
5 case, while imposing just punishment for the high number of crimes he committed.

6 For all the foregoing reasons, the United States respectfully requests the Court  
7 impose a 78 month term of imprisonment, consecutive to Mr. Harris-Moore's  
8 undischarged juvenile sentence, and 3 years of supervised release, with all the special  
9 conditions of supervision recommended by U.S. Probation. The United States also  
10 requests that the Court enter the government's proposed Order of Restitution and the  
11 Preliminary Order of Forfeiture.

12 DATED this 24th day of January, 2012.

13 Respectfully submitted:

14  
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